

GARY K. NELSON, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

LAW LIBRARY

August 23, 1973

ARIZONA ATTORNEY GENERAL

DEPARTMENT OF LAW LETTER OPINION NO. 73-44-L (R-62)

REQUESTED BY: THE HONORABLE A. V. "BILL" HARDT  
Arizona State Senator

QUESTION: Is the affidavit for school elections prepared by the State Superintendent of Public Instruction in conformance with A.R.S. § 15-473 correct and in compliance with recent court decisions? The affidavit reads:

I do solemnly swear that I am a qualified elector of the State of Arizona. I have been a resident of \_\_\_\_\_ Elementary School District and \_\_\_\_\_ High School District, also of \_\_\_\_\_ Community College District (if applicable) for 30 days immediately preceding this election. My address is \_\_\_\_\_, \_\_\_\_\_, Arizona, and I solemnly swear that I am qualified to vote and have not voted in any other school election now being held.

ANSWER: Yes.

Although there may be some confusion resulting from the holding in Marston v. Lewis, \_\_\_\_\_ U.S. \_\_\_\_\_, 93 S.Ct. 1211, 35 L.Ed.2d 627 (1973), that a 50 day voter registration cutoff was constitutional when the evidence showed that period necessary for the preparation of accurate voter lists, nothing in that case should be construed to mean that a 50 day cutoff is mandatory or even desirable.

The statutes which outline the procedures for a school election, A.R.S. §§ 15-471, et seq., provide for the 50 day cutoff only when a school district register is provided. A.R.S. § 15-473.D. The registers are used only in counties of 700,000 or more population, A.R.S. § 15-472.01, and then only when the election is one at which a school trustee or board member is to be elected. "All other school elections shall be conducted by use of affidavits pursuant to this subsection." A.R.S. § 15-473.B.

Obviously, the statutes provide the 50 day cutoff only for the preparation of the school district registers. Where such registers are not used, residence in the school district 30 days prior to the election is sufficient to qualify the voter. A.R.S. § 15-473.A.

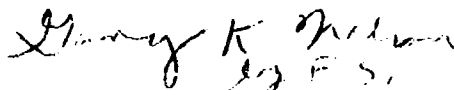
In short, the 50 day cutoff applies only when the register is used; the register, in turn, is used only in counties of 700,000 or more population, and then only when a trustee or board member is to be elected. The affidavit, with its attendant 30 day residence requirement, suffices for all other school elections.

It is to be noted, however, that nothing in the statute dictates that the affidavit must include mention of a 30 day residence. A.R.S. § 15-473.B requires only that the prospective voter sign an affidavit "stating his address and the common and high school districts in which he resides, and swearing he is qualified to vote and has not voted at the school election being held." It can well be reasoned that any mention of the 30 day residency in the affidavit is redundant, since that is covered by the affiant's having sworn that he is "qualified to vote". We note that the affidavit does not mention such other qualifying factors as age or citizenship. Local bond counsel, anticipating a constitutional challenge to even the 30 day residence requirement, favor an affidavit form which complies strictly with the statutory wording, and makes no mention of durational residency.

Although the validity of the 30 day residency has not been challenged, and the affidavit form in question is thus still permissible, we cannot help but agree that the results of an election would be less vulnerable if the affidavit included no mention of durational residency.

In summary, there is no doubt that use of the affidavit requires no more than 30 days residency prior to the date of the election. It is likewise clear that case law to date does not dictate any invalidity of that requirement, but neither does the statute require that a voter swear specifically that he meets that particular qualification, when elsewhere in the affidavit he must swear that he is a qualified voter.

Respectfully submitted,



GARY K. NELSON  
The Attorney General